

DEPARTMENT OF STATE REVENUE

**LETTER OF FINDINGS NUMBER: 93-0319 CSET
Controlled Substance Excise Tax
For Tax Periods: 1993**

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE

1. CONTROLLED SUBSTANCE EXCISE TAX: IMPOSITION

Authority: IC 6-7-3-5

Taxpayer protests the assessment of Controlled Substance Excise Tax.

STATEMENT OF FACTS

Taxpayer was arrested for possession of marijuana on March 14, 1993. The Indiana Department of Revenue issued a record of Jeopardy Finding, Jeopardy Assessment Notice and Demand on March 22, 1993 in a base tax amount of \$377,444.00. Taxpayer filed a protest to the assessment on April 1, 1993. A hearing on the protest was scheduled for 2:00 p.m. on September 23, 1998. Taxpayer was notified of the hearing at his last known address and called the Hearing Officer to discuss the upcoming hearing. Taxpayer did not appear for the hearing. Further facts will be provided as necessary.

Controlled Substance Excise Tax-Imposition

DISCUSSION

IC 6-7-3-5 imposes the Controlled Substance Excise Tax on the possession of marijuana in the State of Indiana. A police statement and the lab report indicate that Taxpayer was in possession of marijuana. Taxpayer has the burden of proving that the information in the file and assessment are incorrect. Since

Taxpayer did not appear at the hearing or offer any written information in lieu of a hearing, the Department must rely on the contents of the file in making a decision on the matter. Therefore, the tax properly applies to Taxpayer in this situation.

Taxpayer contended in his protest letter and subsequent submissions that Judge Paul R. Cherry, Judge of Dekalb Circuit Court dismissed the Controlled Substance Excise Tax Liability on March 14, 1994. The Order and Judgment for Felony Sentencing indicate that the Judge dismissed the Class D Felony of Failure to Pay Controlled Substance Excise Tax. The Judge clearly only dismissed the criminal penalty. Even if the Judge intended to waive the imposition of the tax itself, he did not have the authority to do so.

FINDING

Taxpayer's protest is denied.